

§ 260.8

20 CFR Ch. II (4–1–08 Edition)

§ 260.8 Pre-hearing case review.

(a) *General.* The hearings officer assigned to a case may, prior to an oral hearing, upon his or her own motion, refer the case back to the office of the Board which issued the initial decision for the purpose of reconsideration of that decision, where the hearings officer finds that:

(1) Additional evidence pertinent to the resolution of the issues on appeal was submitted by the appellant at the time the appeal was filed, or subsequent thereto; or

(2) Additional evidence pertinent to the resolution of the issues on appeal is available and should be procured; or

(3) There is some other indication in the record that the initial decision may be revised in a manner favorable to the appellant.

(b) *Referral of case for further review by initial adjudicating unit.* Where the hearings officer finds that referral of a case back to the office which issued the initial decision for the purpose of reconsideration of that decision would be warranted, the hearings officer shall give that office the reason for such referral, together with specific directions as to the handling of the case on reconsideration.

(c) *Reconsideration of case by initial adjudicating unit.* The office to which a case is referred shall promptly undertake any additional development required, and shall make a determination as to whether the initial determination may be revised in whole or in part in a manner favorable to the appellant. Upon issuance of its determination, the office in question shall return the case along with a copy of its decision to the hearings officer.

(d) *Revision of initial decision in whole or in part.* Where the office to which a case is referred determines to revise its initial decision in whole or in part, that office shall notify the appellant of such determination. If the revised determination is wholly favorable to the appellant, he or she shall be notified that the appeal to the Bureau of Hearings and Appeals will be dismissed by the hearings officer assigned to the case. If the revised decision is partially favorable to the appellant, the notice shall inform the appellant that the hearings officer will proceed with the

portion of the appellant's case not revised in his or her favor, unless the appellant should request dismissal of the appeal.

(e) *Timely conduct of oral hearing.* The fact that a case on appeal has been referred back to the office which issued the initial decision in the case shall not delay the conduct of a hearing scheduled with respect to the appeal, unless the appellant agrees to a delay. If it appears that the office to which a case has been referred will not have completed its reconsideration of the case prior to the date of a scheduled hearing on an appeal and the appellant has not agreed to a delay in the conduct of the hearing, the hearings officer shall proceed with the hearing and the handling of the case as though the case had not been referred back to the office.

[47 FR 36809, Aug. 24, 1982, as amended at 67 FR 77155, Dec. 17, 2002]

§ 260.9 Final appeal from a decision of the hearings officer.

(a) *General.* Every appellant shall have a right to a final appeal to the Railroad Retirement Board from any decision of a hearings officer by which he or she claims to be aggrieved.

(b) *Appeal from decision of hearings officer.* Final appeal from a decision of a hearings officer shall be made by the execution and filing of the final appeal form prescribed by the Board. Such appeal must be filed with the Board within 60 days from the date upon which notice of the decision of the hearings officer is mailed to the appellant at the last address furnished by him or her. Any written request stating an intent to appeal which is received within the 60-day period will protect the claimant's right to appeal, *Provided that* the claimant files the appeal form within the later of the 60-day period following the date of the hearing officer's decision, or the 30-day period following the date of the letter sending the form to the claimant.

(c) *Timely filing.* The right to further review of a decision of a hearings officer shall be forfeited unless formal final appeal is filed in the manner and within the time prescribed in § 260.9(b). However, when a claimant fails to file an appeal before the Board within the